IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17508 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? 1 & 2 : YES; 3 to 5 NO

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GUNVANTBHAI DAHYABHAI PARMAR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MS TRIVEDI for Petitioner(s) : 1,MS PRANJAL M TRIVEDI for Petitioner(s) : 1,
MR MUKESH PATEL AGP for Respondent(s) : 1,
MR SATYAM Y CHHAYA for Respondent(s) : 2,
MR SHUKLA for NANAVATI & NANAVATI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 07/12/2005

ORAL JUDGMENT

1. This petition invoking Articles 226 and 227 of the Constitution is filed by a disabled son of the mother who passed away as a pensioner on 5.8.2004 after making an application for family pension for her son on the ground that the petitioner-son was a handicapped person since his childhood. The mother of the petitioner had served under respondent No.3 as a

Principal and was in receipt of regular pension since her retirement in the year 1984. The application of the petitioner for family pension was turned down on the basis of a report of the Deputy Chief Accountant (Pension Department) of respondent No.2 that the benefit of family pension could not be granted in cases of pensioners who had retired before 6.10.1999.

2. The petitioner has relied upon the Resolution dated 6.7.1989 of the State Government (Annexure-A to the petition), according to which, the Family Pension Scheme, 1972 was introduced for the benefit of the employees' widow/widower and failing the claim of widow, a minor son or an unmarried minor daughter was entitled to get family pension upto the age of 21 years and 30 years respectively. The Government of Gujarat, by the said Resolution dated 6.7.1989, decided that, if the son or daughter of a government servant was suffering from disorder or disability of mind etc., or was physically crippled, or disabled so as to render him or her unable to earn a livelihood even after attaining the age of 21 years in the case of son and 30 years in the case of daughter, such case should be considered individually on merits and family pension should be granted to such son or daughter for life-time subject to fulfillment of the conditions. One of the conditions is that, as and when the disability which makes him or her unable to earn his or her livelihood manifests itself, that fact should be

brought to the notice of the Head of the Office, and such intimation should be duly supported by a medical certificate from a Medical Officer, not below the rank of Civil Surgeon. This has to be indicated in Annexure-I Part-II to the G.R.F.D.No.NVN-1081-2761-P dated 26.11.1981 by the Head of the Office. As and when the claim for family pension arises, the legal guardian of the child has to make an application supported by a fresh medical certificate from a Medical Officer, not below the rank of Civil Surgeon, stating that the child still suffered from the disability. Before allowing family pension for life to any such son or daughter, the sanctioning authority has to satisfy itself that the disability is of such a nature as to prevent him or her from earning his or her livelihood and the same has to be evidenced by a certificate obtained from a Medical Officer, not below the rank of Civil Surgeon, setting out, as far as possible, the exact mental or physical condition of the child. By way of explanation, it is clarified that only the disability which manifests itself before the retirement or death of the government servant while in service shall be taken into account for the purpose of grant of family pension and such pension has to be stopped if he or she starts earning his or her livelihood. The resolution was to take effect from 1.4.1989.

2.1 Referring to the aforesaid resolution, the State Government in its Finance Department issued

amendment on 6.10.1999 to make some administrative changes so as to facilitate entering of the name of the disabled children before the widow or widower of the pensioner would pass away. According to that resolution, the pensioners in receipt of pension were required to make an application in triplicate for inclusion of the names of handicapped children into the pension payment orders and the prescribed procedure was to be followed so that the difficulties faced by such claimants after death of the pensioner could be avoided.

3. By filing an affidavit of the Deputy Chief Accountant, respondent No.2 has raised the objection that the petition filed by the petitioner in his own capacity was not maintainable and the aforesaid Resolution dated 6.7.1989 would have no application since the benefits were to be granted with prospective effect and the mother of the petitioner had retired on 31.8.1984 before the said resolution.

3.1 Learned counsel Mr.Chhaya, appearing for respondent No.2, pointed out from the resolution that the explanation to the effect that: only the disability which had manifested itself before retirement or death of the employee while in service was to be taken into account, indicated that handicapped children of the pensioners who had already retired could not claim the benefit under that resolution. The learned A.G.P. submitted that

every disability cannot be presumed to result in the son or the daughter being unable to earn a livelihood; and, therefore, if the son or the daughter of a pensioner were mentally retarded or physically handicapped, but capable of earning his or her livelihood, he or she cannot claim the benefit of the said resolution.

4. It must be noted at this stage that, by virtue of an interim order dated 15.11.2005, the petitioner was called upon to make the necessary application in the prescribed form for the purpose of obtaining family pension in terms of the Resolution dated 6.10.1999 and respondents No.2 and 3 were required to duly process that application as if the aforesaid resolution was applicable and the respondents were also required to file reply, if they were to choose to do so. Pursuant to that order, application is stated to have been submitted and processed by the respondents and no other formal, technical or legal objection was raised in disbursement of the due amount except the legal objections which were voiced in the form of contentions and arguments before this Court. The learned A.G.P. has only argued that the petitioner's deceased mother was not a government employee and the resolution of the Government relied upon by the petitioner may not directly apply in the facts of the case even as the contents of the said resolution are now incorporated into Rule 93 of the Gujarat Civil

Service (Pension) Rules, 2002.

5. It is clear from the objections raised by respondents No.2 and 3 that they have taken the view that the Resolution dated 6.7.1989 was prospective in effect and the petitioner could not take the benefit of extension of the family pension scheme by the State Government. It is, however, obviously clear from bare reading of the resolution that physical or mental disability of a son or a daughter of a government servant is required to be brought to the notice of the Head of the Office as and when such disability making him or her unable to earn livelihood manifests itself and only the disability which has manifested itself before retirement or death of the government servant while in service can be taken into account for the purpose of grant of family pension. In the facts of the present case, although there is no dispute about manifestation of disability before retirement of the mother of the petitioner, it could not have been brought to the notice of the Head of the Office in compliance with the conditions of the resolution simply because the resolution itself was not in existence when the mother of the petitioner retired. That, by itself, however, does not make the resolution prospective in effect so as to disentitle the persons eligible for family pension thereunder.

5.1 In any case, the actual benefit could not

have been claimed till the mother of the petitioner was alive and in receipt of pension. The grant of family pension for life-time for a son or a daughter of a deceased government employee is an improvement upon the scheme introduced by the Resolution dated 1.1.1972 under which the widow/widower was entitled to get family pension till her or his death and, failing the claim of the widow, the minor son or unmarried minor daughter was entitled to get the family pension upto the age of 21 or 30 years respectively. Therefore, the occasion to claim family pension on the ground of the petitioner being disabled arose only when the mother of the petitioner passed away; at which time, the Resolution dated 6.7.1989 was admittedly in force. Therefore, even assuming that the Resolution dated 6.7.1989 was purely prospective in effect, the petitioner has not claimed the benefit retrospectively, but demanded the benefit which has accrued to him only after the death of his mother on 5.8.2004. Having regard to the intent and language of both the Resolutions dated 6.7.1989 and 6.10.1999, it is clear that the benefit of family pension was sought to be granted to disabled son or daughter of an employee subject to verification of the disability and continued inability to earn livelihood.

5.2 The learned counsel for respondents No.2 and 3 fairly conceded that the scheme of family pension and the amendments made therein from time to time by

the State Government were being applied to the ex-employees of respondent No.3 and the mother of the petitioner was admittedly a retired employee who had served for 32 years under respondent No.3.

6. In the above facts and for the reasons discussed hereinabove, it is held that the aforesaid resolutions are applicable to the petitioner and he is entitled to the benefit of those resolutions subject to the sanctioning authority being satisfied that the disability of the petitioner was of such a nature as to prevent him from earning his livelihood. It was fairly conceded that the necessary medical certificate issued by the Medical Officer of the rank of Civil Surgeon was already submitted by the petitioner and accepted by the respondents. With these observations, the petition is allowed and the respondents are directed to disburse the amount of family pension with effect from 5.8.2004 in terms of the aforesaid resolutions and subject to fulfillment of the conditions of the resolutions, within a period of one month. Rule is made absolute with no order as to costs.

7. Learned counsel for respondent No.2 prayed for staying the operation of this judgment for a period of four weeks. In view of the time of one month having been allowed for implementing the order, the prayer for stay against its operation is not required to be granted.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)